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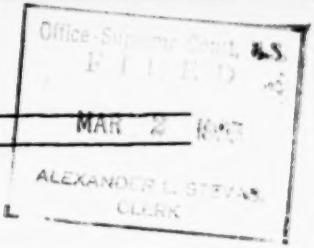

In The

Supreme Court of the United States

October, 1983

Deborah Ann Astemborski
Petitioner

v.

Robert Susmarski

PETITION FOR WRIT OF CERTIORARI
FROM THE SUPREME COURT OF PENNSYLVANIA

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PETITION FOR A WRIT OF CERTIORARI
FROM THE SUPREME COURT OF PENNSYLVANIA

QUESTION PRESENTED FOR REVIEW

1. Is 42 Pa. C.S.A. §6704(e), specifying that actions for paternity must be brought within six years from the date of birth of a non-marital child, unconstitutional.

PARTIES

The caption of the case contains the names of all parties to the proceeding before the Supreme Court of the State of Pennsylvania.

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REPORTS

The opinions of the Pennsylvania Supreme Court is reported at 451 A.2d 1012.

JURISDICTION

The judgment of the Pennsylvania Supreme Court was dated November 4, 1982.

This is an Appeal from a final judgment of the State Court of last resort and jurisdiction is invoked under the provisions of 28 U.S.C. §1254(1).

STATUTES AND REGULATIONS INVOLVED

42 Pa. C.S.A. §6704(e):

> All actions to establish the paternity of a child born out of wedlock brought under this section must be commenced within six years of the birth of the child, except where the reputed father shall have voluntarily contributed to the support of the child or shall have acknowledged in writing his paternity,in which case an action maybe commenced at any time within two years of any such contribution or acknowledgement by the reputed father.

STATEMENT OF THE CASE

This suit in the name of Deborah Ann Astemborski was instituted on behalf of her child, Eric Ryan McKinley, who was born on January 13, 1975.

On September 2, 1980, Deborah Ann Astemborski assigned her rights concerning support for her child, Eric Ryan McKinley, to the Pennsylvania Department of Public Welfare. The assignment form was subsequently forwarded to the Support In-Take Office of Erie County Pennsylvania and was processed by the Domestic Relations Office of Erie County Pennsylvania in accordance with the established procedures. Thereafter, a complaint for support was entered on the Docket at the Erie County Prothonotary's Office on January 29, 1981, or six years and sixteen days after the birth of Eric Ryan McKinley.

Robert Susmarski, the alleged natural father of the child, Eric Ryan McKinley, thereafter filed a Motion to Dismiss the support complaint based upon the Statute of Limitations contained in 42 Pa. C.S.A. §6704(e), which provides that all actions for support involving non-marital children must be filed within six years from the birth of the child.

An Argument was held and Briefs were filed in the Erie County Court of Common Pleas, Sixth Judicial District for the State of Pennsylvania on Robert Susmarski's Motion to Dismiss the Complaint for Support.

The Court of Common Pleas filed an Opinion and entered an Order dated April 12, 1982 holding that the provisions of 42 Pa. C.S.A. §6704(e) were unconstitutional as being violative of the equal protection and due process provisions of the United States and Pennsylvania Constitutions. Therefore the Court denied the Motion to Dismiss the support complaint filed by Robert Susmarski.

A direct appeal to the Pennsylvania Supreme Court was taken on May 12, 1982 and subsequently argued on September 23, 1982. In an Opinion and Order filed November 4, 1982, the Pennsylvania Supreme Court overturned the Court of Common Pleas of the Six Judicial District of Pennsylvania and upheld the provisions of 42 Pa. C.S.A. §6704(e) as being constitutional.

This Petition for Writ of Certiorari is from the Order of the Pennsylvania Supreme Court dated November 4, 1982.

REASONS FOR GRANTING THE WRIT

1. Conflict with Other Decisions

While the issue before the Court is extremely brief and narrowly drawn, it is none the less important and ripe for decision. The issue for

decision is whether 42 Pa. C.S.A. §6704(e) of the Judicial Code, relating to the six year Statute of Limitations of paternity cases, violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article One Section 26 of the Pennsylvania Constitution, by requiring that all actions to establish paternity of a child born out of wedlock must be commenced within six years of the birth of the child in order to sue for support, and by not imposing such a restriction upon a child born in wedlock.

In Gomez v. Perez 409 U.S. 535, 93 S. Ct. 872, 35 L.Ed. 2d 56(1973), the Supreme Court held that a Texas law granting two legitimate children the right to recovery rights in Workman's Compensation claims, but denying that right to illegitimate children, was unconstitutional as violative of the Equal Protection Clause and constitute invidious discrimination without justification. The Court discussed the problems in proving paternity but stated:

> "we recognize the lurking problems with respect to proof of paternity. Those problems are not to be lightly brushed aside, but neither can they be made into an impenetrable barrier that

works to shield otherwise invidious discrimination." (At p.538).

Applying these standards established by the United States Supreme Court, several states have found limitations of actions in paternity actions to be unconstitutional.

The Florida Supreme Court in Gillespie v. West 378 S. 2d 1220 (1980) held the Florida four year Statute of Limitations to be unconstitutional. The Court found that the interest of the State to discourage stall claims was irrelevant due to the recurring and continuing nature of child support. It further discounted that proof of paternity becomes more difficult with the passage of time. The Court stated:

> "Furthermore, this Statute bears at best a tenuous relationship to the interest it seeks to advance of ensuring the availability of adequate proof of paternity. The arbitrary determination that paternity can only be proved in four years creates an inpenetrable barrier to an illegitimate child's right to seek support without considering alternatives which deal directly with the problem of proof. Although proof of paternity may become more difficult with the passage of time, this mere possibility cannot be allowed to work an unconstitutional discrimination against illegitimate children."

The Court also held that the only proper application of any Statute of Limitations is to barr claims after they had accrued and had not been adjudicated within the time limit. The duty of support is an on-going one throughout minority, and new causes of action accrue each day the father does not provide support. "This duty cannot be barred for illegitimates if it is allowed for legitimate children."

The North Carolina Court of Appeals found the state's three years Statute of Limitations for paternity actions unconstitutional in County of Lenoir Ex. rel. Cogdell v. Johnson, 264 S.E. 2d 816 (1980). The Court dismissed the defendant's argument of a substantial state interest in preventing stale or fraudulent claims by stating that child support is ongoing and therefore can never be stale. It also noted that the mere passage of time does not bear a direct relation to the truth of the claim. Lastly, the Court stated that a child's need for support far out weighs the state's interest in preventing stale claims.

In Re: Interest of Miller, 605 S.W. 2d 332, (1980) the Texas Court of Civil Appeals held the one year Statute of Limitations unconstitutional as a denial of

equal protection pursuant to Gomez v. Perez, Supra, thereby reversing an existing Texas case law. In so doing, the Court followed the same logic as applied by Florida in Gillespie v. West, Supra, and North Carolina in Lenoir v. Johnson, Supra, the Court in Miller held:

> "....We find the Statute unconstitutional in that it creates two classes, legitimates and illegitimates, invidiously discriminating against the latter class. To hold otherwise would allow the illegitimates rights to support be waived by the mother. Not only owuld this result in unequal protection under the law, as legitimates are not subject to the same ultimate waiver and foreclosure of their rights to support by third persons, but such denial would violate the illegitimate's constitutional rights to due process. Nullus Jus alienum foris facere potest. The law does not permit one to forfeit another's right. The right of an illegitimate child to assert a claim for parental support is too fundamental to permit it forfeiture by the mother's failure to timely institute a filiation proceeding."

The Court concluded by noting the stale or fraudulent claims argument and dismissing the same as against the State's public policy that parents are obligated to support their children regardless of marital status at birth.

A few jurisdictions have held Statute of Limitations constitutional. These include Maryland in Thompson v.

Thompson, 404 A.2d 269 (1979) and Iowa Ex. rel Krupkie v. Witkowski, 256 N.W. 2d 216 (1977). These cases hold that the Statute of Limitations is a reasonable limitation upon the ability of a child to establish paternity. They have found that the State's interest in avoiding stale claims is more important than that of a child receiving support.

In additon to the foregoing reasons regarding the propriety of granting Certiorari, this Court, as recently as April, 1982, has considered this matter involving a Texas oneyear Statute of Limitations and four separate concurring opinions were submitted by the Court. In Mills v. Habluetzel _____U.S._____102 S. Ct. 1549 (1982), this Court overturned a Texas one year Statute of Limitation and the concurring Opinions left ajar consideration by the Court of longer periods of limitations.

In Mills, Justice O'Connor, with the Chief Justice Justice Brennan and Justice Blackmun joining stated:

> "Today this Court holds that a Texas Statute proscribing a one year statute of limitations for paternity suits violates the Equal Protection Clause of the Fourteenth Amendment. Although I agree with the Court's analysis and results, I write separately because I fear that the Opinion

may be misinterpreting as approving the four year Statute of Limitations now used in Texas." (At p. 1556)

The Court went on to say:

"Finally, the practical obstacles to filing suit within one year of birth could as easily as several years after the birth of the illegitimate child....the risk that the child will find himself without financial support from his natural father seems as likely throughout his minority as during the first year of his life." (At p. 1557-1558)

Petitioner submits because this issue is of timely concern to both the citizens of the Commonwealth of Pennsylvania and obviously by virtue of the concurring opinion in the Mills decision that Certiorari should be granted to hear this case.

2. Impact to the States

This Court has long recognized the valid interest of a state to secure support for the child born out of wedlock and to prevent it from becoming a public charge.

When considered in the light of an equal protection due process analysis, there is no apparent reason for treating a marital child differently from the non-marital child.

Obviously, if non-marital children or, when their rights are properly assigned, public agencies, are able

to secure support from the responsible party throughout the period of minority, the burden on tax payers would be substantially lessened. The state's interest in attempting to hold responsible those individuals with primary responsible for support should be of paramount consideration.

CONCLUSION

Because of this Court's obvious interest, as demonstrated in the Mills decision and the conflict among various state decisions concerning Statutes of Limitations in paternity actions, as well as, the State's vital interest financially, this Court should grant Certiorari.

Respectfully submitted,

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